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Before the  
Federal Communications Commission  
Washington, D.C. 20554

FCC MAIL SECTION

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the application. First, she proposes to change its name to Davis Broadcasting Company, Ltd., an Ohio Limited Liability Corporation. Davis urges that, since she will retain major control of the new entity, the proposed amendment is a permissible ownership change, under the Commission's rules. See 47 CFR § 73.3573(a) and (b) (defining major ownership change). Next, Davis requests that, as provided for in *FCC Freezes Comparative Proceedings*, 9 FCC Rcd 1055 (1994), she formally be released from her prior integration pledge, and amends her application accordingly. We will grant this proposed amendment which has been shown to be fully consistent with controlling Commission precedent. *Charisma, supra*.

4. An earlier petition for leave to amend was filed by Davis on August 15, 1994, before the settlement, proposing a new transmitter site. This amendment was supported by an engineering exhibit of more than 20 pages. Before reaching the merits of the site amendment, we will consider a petition to intervene filed pursuant to 47 CFR § 1.223 by Radio Stations WPAY/WPFB, Inc. on September 23, 1994. This petition contained the bare allegation that allowing the Davis amendment would result in "short-spaced sites, to the extent that WPAY-FM may well be precluded from changing its own site, antenna height or other operating parameters." However, no factual justification supports this conclusion. Nor was an affidavit by a person with personal knowledge of the facts presented or the petition supported by "the affidavit of a qualified radio engineer" as required by the Commission's intervention rule. See 47 § CFR 1.223(c) which provides that a petition to intervene:

.... shall be accompanied by the affidavit of a person with knowledge of the facts set forth in the petition, and where petitioner claims that a grant of the application would cause objectionable interference under applicable provisions of this chapter, the petition to intervene must be accompanied by the affidavit of a qualified radio engineer showing the extent of such alleged interference according to the methods described in paragraph (a) of this section.

The petition for leave to intervene is defective for both procedural and substantive reasons and will be denied. We also note that petitioner simply cannot show any justiciable injury because Davis' proposed site is "in conformance with the Commission's technical rules." See Mass Media Bureau's Opposition to Petition to Intervene filed October 4, 1994.

5. Returning to the merits of the Davis site amendment, we note that besides the substantial engineering showing it contains, the Bureau, in comments filed August 24, 1994, supported a grant of the amendment because the four month period between the time Davis discovered that her original site was no longer available and the submission of the amendment "is not excessive in view of the efforts undertaken to secure a new site and to prepare a new engineering proposal. See *Mableton Broadcasting Company, Inc.*, 5 FCC Rcd 6314, 6320-21 (Rev. Bd. 1990)." And, after reviewing Davis' technical proposal, the Bureau's staff determined that it conforms with the Commission's rules. We agree with the Bureau that Davis' showing fully justifies our decision to grant the amendment.

6. ACCORDINGLY, IT IS ORDERED, That the petition to intervene filed September 23, 1994, by Radio Stations WPAY/WPFB, Inc. IS DENIED:

## MM Docket No. 93-107

In re Applications of

DAVID, A. RINGER File No. BPH-911230MA

ASF BROADCASTING File No. BPH-911230MB  
CORPORATION

WILBURN INDUSTRIES, INC. File No. BPH-911230MC

SHELLEE F. DAVIS File No. BPH-911231MA

OHIO RADIO File No. BPH-911231MC  
ASSOCIATES, INC.

For Construction Permit for a  
New FM Station on Channel 280A,  
Westerville, Ohio

## MEMORANDUM OPINION AND ORDER

Adopted: February 22, 1996;

Released: March 1, 1996

By the Review Board: MARINO (Chairman), and  
GREENE.

1. On December 13, 1995, the five applicants in this case filed a Joint Request for Approval of Settlement Agreement, Dismissal of Pending Pleadings, Dismissal of Applications and Grant of Application. The Mass Media Bureau filed comments in support on January 16, 1996. We will grant the joint request which complies with all the legal requirements established by the Commission to implement 47 U.S.C. 311(c)(3).

2. Shellee F. Davis has agreed to pay the sum of \$125,000 to each of four applicants, David A. Ringer (Ringer), ASF Broadcasting Corp. (ASF), Wilburn Industries, Inc. (Wilburn), and Ohio Radio Associates, Inc. (ORA), who, in return, have agreed to dismiss their applications. As required by Section 73.3525, 47 CFR § 73.3525, all applicants have established that their applications were not filed for purposes of reaching a settlement agreement. They have also urged that approval of the agreement will serve the public interest by expediting the institution of a new FM broadcast station in Westerville, Ohio. Finally, because the parties have reached a universal settlement within the time period established by the Commission, the limitation on payments to dismissing applicants has been waived. See *Public Notice*, 10 FCC Rcd 12182 (1995), and *Charisma Broadcasting Corporation*, FCC 95I-35, released December 13, 1995.

3. On January 26, 1996, after the universal settlement was filed, Shellee F. Davis filed a motion for leave to amend her application to change the name and structure of

7. IT IS FURTHER ORDERED, That the petition for leave to amend filed on August 15, 1994, and the motion for leave to amend filed on January 26, 1996, by Shellee F. Davis ARE GRANTED, and that the tendered amendments ARE ACCEPTED; and,

8. IT IS FURTHER ORDERED, That the exceptions and related pleadings ARE DISMISSED; that applicants' Joint Request For Approval of Settlement Agreement, Dismissal Of Pending Pleadings, Dismissal of Applications and Grant of Application, filed December 13, 1995, IS GRANTED; that the amended application of Davis Broadcasting Company, Ltd. (File No. BPH-911231MA) for a construction permit for a new FM station on Channel 280A in Westerville, Ohio, IS GRANTED; that the applications of David A. Ringer, ASF Broadcasting Corporation, Wilburn Industries, Inc., and Ohio Radio Associates, Inc., ARE DISMISSED; and that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Joseph A. Marino  
Chairman, Review Board